imposes only on incumbent LECs." See also 47 C.F.R. § 51.223. Two petitioners, the Ohio PUC and the Texas PUC, request that the Commission reconsider or clarify this ruling. In particular, the Ohio PUC requests that the Commission broadly reconsider and withdraw in its entirety its rule under 251(h)(2). The Texas PUC asks the Commission to clarify that an existing provision of Texas state law is not inconsistent with the Commission's decision. Both requests should be denied.

The Ohio PUC (at 4-6) argues that Section 251(d)(3), which preserves certain state regulations, allows states to impose on non-ILECs obligations that the Act limits to ILECs, and that prohibiting states from doing so could harm competition. These claims are wrong. The Commission's decision is a straightforward application of Section 251(h)(2). As explained in the First Report and Order (¶ 1248), allowing states to impose obligations on non-ILECs which do not meet the criteria specified in 251(h)(2) "would be inconsistent with the statute." Because Section 251(d)(3) preserves only those state regulations that are "consistent" with Section 251, this finding is completely dispositive of Ohio's legal argument.

The Commission's decision, moreover, is equally sound as a policy matter. Imposition of the Section 251(c) obligations on non-incumbents that lack market power is not necessary, and could prohibit or have the effect of prohibiting entry by prospective competitors. Indeed, the Ohio PUC (at 5-6) claims that the purpose as well as the effect of imposing obligations on non-incumbents is to "forc[e] [them] to very thoroughly weigh the costs and benefits of entering the market." Such regulations would therefore raise serious questions of lawfulness under both Section 253(a), which prohibits state regulations that create barriers to entry, and Section 251(d)(3)(C), which precludes the enforcement of state regulation that "substantially prevents implementation" of the "purposes" of the Act.

Finally, Section 251(h)(2) allows the Commission or the states to impose Section 251(c) obligations on non-incumbents that are deemed to be "comparable" to incumbents under the standards set forth therein, and the First Report and Order (¶ 1248) states that the Commission will give "particular consideration" to applications by state commissions to apply these standards in appropriate circumstances. Thus, any state, including Ohio, is free to seek authorization to impose obligations on non-incumbents by demonstrating that the standards of Section 251(h)(2) are satisfied.

The request of the Texas PUC (at 5-7) that the Commission clarify in this proceeding that Texas may continue to enforce a state statute requiring that non-ILECs "resell their existing loop facilities" in certain circumstances is improper, and should be denied without prejudice.[82] The Texas PUC is not seeking clarification of the Commission's rules, but a decision on the application of the Section 251(h)(2) criteria to particular carriers and circumstances in that state. Such a ruling should be sought through an application under ¶ 1248 of the First Report and Order, not a petition for reconsideration or clarification of the Commission's rules.[83]

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[82] See Section 3.453 of the Texas' Public Utility Regulatory Act of 1995 ("PURA95").

[83] The Texas PUC also requests that the Commission "clarify" whether Section 3.458 of PURA95, requiring all "providers of telecommunications services to maintain interoperable networks," is inconsistent the Act. AT&T notes that the Act imposes on non-incumbent LECs certain obligations, including the obligation to interconnect with other carriers, but the Texas PUC does not provide sufficient information about the meaning or application of the Texas statute to allow the Commission to make an informed decision.

## VIII. THE COMMISSION SHOULD DENY REQUESTS THAT IT DISREGARD ITS STATUTORY DUTY UNDER SECTION 208 OF THE ACT TO ADJUDICATE COMPLAINTS AGAINST ILECS.

Two petitioners, the Texas PUC, and the Wisconsin PSC, have made requests addressed to the Commission's authority and duty to adjudicate complaints against incumbent LECs alleging violations of their obligations under Section 251 of the Act. These requests should be denied.

In particular, there is no merit to the claim of the Texas PUC (at 8-11) that the Commission's Section 208 authority does not extend to alleged violations of Section 251:

> "[Section] 208, which predates enactment of the 1996 Act, requires the Commission to adjudicate and, if necessary, remedy private 'complaints' alleging that a telecommunications carrier has acted in' contravention of the provisions' of the Communications Act of which the 1996 Act is a part. Nothing in the 1996 Act amends Section 208 or excuses the Commission in adjudicating a complaint under that provision, from determining whether an incumbent LEC has violated Section 251(c)'s requirement that rates for interconnection and unbundled access to network elements be just, reasonable and nondiscriminatory.'"[84]

In support of its claim, the Texas PUC cites Section 251(e)(6) of the Act, which provides aggrieved parties the right to seek review in federal district court of state decisions under Section 252, but the Commission considered and rejected this precise argument in the First Report and Order.[85] Accordingly, the Texas PUC provides no basis for reconsideration.

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[84] FCC Application to Vacate Stay, at 18 n.4, FCC v. Iowa Utilities Board, et al., No. A-299 (U.S., filed October 24, 1996).

[85] First Report and Order, ¶ 126 (concluding that Section 252(e)(6) "does not divest the Commission of jurisdiction over complaints that a common carrier violated Section 251 or Section 252 of the Act"). Contrary to the Texas PUC's claim, the availability of multiple remedies to challenge a carrier's conduct is by no means extraordinary. For example, Section 206 and Section 208 give parties the option of pursuing complaints

(footnote continued on following page)

Unlike the Texas PUC, the Wisconsin PSC (at 8-9) does not challenge the Commission's authority to entertain complaints, but requests that the Commission refrain from doing so "during pending negotiations or arbitrations," to avoid a "multiplicity of proceedings." This request is premature and probably unnecessary. Although the arbitration process is well underway in many states, AT&T is aware of no complaints that have been filed before the Commission alleging violations of Sections 251 or 252. In many if not most or even all cases, carriers that are parties to pending arbitration proceedings will most likely choose to raise their concerns before the arbitrator or state commission, at least in the first

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(footnote continued from previous page)

under the Communications Act before the Commission or the federal courts. Moreover, as the First Report and Order (¶ 128) makes clear, the Commission would not be "directly reviewing the state commission's decision, but rather [its] review would be strictly limited to determining whether the common carrier's actions or omissions were in contravention of the Communications Act."

instance. In these circumstances, there is no need for the Commission, particularly without examining the circumstances of any case that is presented to it, to announce that it will not perform its duty to adjudicate complaints that are lawfully brought under the Act.

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October 31, 1996

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AirTouch Paging ("AirTouch"), Cal-Autofone, and Radio Electronic Products Corp. ("REPCO") (collectively, "Companies")

American Electric Power Service Corporation, Commonwealth Edison Company, Duke Power Company, Entergy Services, Inc., Northern States Power Company, The Southern Company, and Wisconsin Electric Power Company (collectively, "American Electric")

American Public Power Association ("APPA")

Arch Communications Group, Inc. ("Arch")

Association for Local Telecommunications Services ("ALTS")

Association of American Railroads ("AAR")

AT&T Corp. ("AT&T")

Beehive Telephone Company, Inc. ("Beehive")

Carolina Power & Light Company ("CPL")

Cellular Telecommunications Industry Association ("CTIA")

Public Utilities Commission of the State of Colorado ("COPUC")

Comcast Cellular Communications, Inc. ("Comcast Cellular") and Vanguard Cellular Systems, Inc. ("Vanguard Cellular") (collectively, "Petitioners")

Consolidated Communications Telecom Services Inc. ("CCTS")

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Florida Power & Light Company ("Florida Power")

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Lower Colorado River Authority ("LCRA")

Margaretville Telephone Co., Inc. ("Margaretville")

MCI Telecommunications Corporation ("MCI")

MFS Communications Company, Inc. ("MFS")

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UTC, the Telecommunications Association ("UTC")

Washington Utilities and Transportation Commission ("WUTC")

WinStar Communications, Inc. ("Winstar")

Public Service Commission of Wisconsin ("Wisconsin PSC")

WorldCom, Inc. ("WorldCom")

## CERTIFICATE OF SERVICE

I, Ann Marie Abrahamson, do hereby certify that on this 31st day of October, 1996, a copy of the foregoing "AT&T Opposition to and Comments on Petitions for Reconsideration and Clarification of First Report and Order" was mailed by U.S. first class mail, postage prepaid, to the parties listed on the attached Service List.

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